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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

GORDON HEMPTON, Plaintiff,

v.

POND5, a Delaware Corporation; and POND5
USER CKENNEDY342, a corporation or
individual of type unknown, Defendants.

No. 3:15-cv -05696-RBL

**DECLARATION OF
MATTHEW JOHNSTON**

1. I declare under penalty of perjury under the laws of the State of
    Washington that the following is true and correct.

2. My name is Matthew Johnston, I am over 18 years of age and competent to
    testify in this matter.

3. I am an audio professional who has worked in digital media audio
    production and direction for over 20 years.

4. My formal education is Bachelor of Liberal Arts. I have worked in the past
    as Sound Designer, Senior Producer, and Audio Director for Electronic
    Arts, PopCap Games, and Soni-Fi LLC. This opinion, however, is mine
    and mine alone and does not reflect the opinion of any employer or other
    person besides that of the undersigned.

5. Throughout my career, I have designed and built complex digital audio
    hardware and software systems, including advanced simulations
    and algorithmic analysis tools.
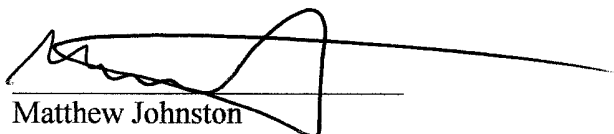
Declaration of Matthew Johnston

6. The Plaintiff in this case, Gordon Hempton, asked me for my opinion as to whether his recordings could have been identified by Audible Magic's software.

7. My skill set is the same skill set that is required to understand how Audible Magic's software works. I have reviewed Audible Magic's product data sheet that indicates the parameters and the functional limits of Audible Magic's Software.

8. The software of Audible Magic is designed to compare the sonic traits of the unknown recording with the database of known recordings. This system is called Automatic Content Recognition (ACR).

9. As described on Audible Magic's website, "ACR media identification is based on the perceptual characteristics for audio, which allows it to accurately identify content across file formats." In other words, it is looking at the characteristics of the sound, not the data file to determine whether a recording is a copy

10. I have reviewed the Core Technology Data Sheet available on Audible Magic's website www.audiomagic.com and I have attached it to this declaration for reference.

11. Review of the Data Sheet revealed that I had the same skill set and expertise as that would be required to understand how Audible Magic's software works. This is because based on the information I have reviewed the software compares unique and distinctive qualities of individual sound files and then an algorithm determines whether one sound file is identical or nearly identical to another known sound clip.

12. I am aware of the collection of Mr. Hempton and have heard many of his recordings.

13. Mr. Hempton's recordings are of sufficient length and sonic complexity to be identified by the Audible Magic software assuming that the claimed specifications published by Audible Magic correctly describe the functionality of the software.

14. It is my professional opinion that Audible Magic's system is entirely capable of identifying nature sounds and determining their uniqueness and if correctly used would have identified Mr. Hempton's recordings as duplicates if compared to a database of known recordings.

Declaration of Matthew Johnston

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2 Signed on April 30 , 2016 in SEATTLE , WA .

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Matthew Johnston

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Declaration of Matthew Johnston